IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 1447 of 2005(V)

OS.2713/1998 of III ADDL. M.C.,THRISSUR

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PETITIONER:

JAYACHANDRAN, S/O.RAMAKRISHNA PANICKER,
KUNNATHULLI, PONALLUR DESOM, MANALUR VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.D.ANILKUMAR

RESPONDENTS:

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1. KAMALAKSHY,
W/O. THAZHATHUVEETTIL KARAPPAN, OLLUKKARA VILLAGE,
THRISSUR TALUK.

2. KARAPPAN, S/O. THAZHATH VEETTIL ACHUTHAN
OLLUKKARA VILLAGE, THRISSUR TALUK.

3. MANOJ, S/O. KARAPPAN,
OLLUKKARA VILLAGE, THRISSUR TALUK.

4. SUNIL, S/O. KARAPPAN,
OLLUKKARA VILLAGE, THRISSUR TALUK.

5. DILEEP, S/O. KARAPPAN,
OLLUKKARA VILLAGE, THRISSUR TALUK.

6. SOORAJ, S/O. KARAPPAN,
OLLUKKARA VILLAGE, THRISSUR TALUK.

BY ADV. SRI.DILIP J. AKKARA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER IN I.A.1139/2001 IN O.S. 2713/1998 DTD.20.8.2001 OF THE III ADDL.MUNSIFF OF THRISSUR.

EXT.P2 TRUE COPY OF ORDER IN I.A.NO.1140/2001 IN O.S. 2713/1998 DTD.20.8.2001 OF THE III ADDL.MUNSIFF, THRISSUR.

EXT.P3 TRUE COPY OF JUDGMENT IN C.M.APPEAL NO.670/2002 DTD.3.8.2004 OF DISTRICT JDUGE, THRISSUR.

TRUE COPY

P.A.TO JUDGE

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 1447 OF 2005

Dated this the 22nd day of June, 2007

JUDGMENT

Notice issued to 4th respondent returned as unclaimed invoking the relevant provisions of High Court Rules,(Rule 51 (2)) service to 4th respondent is declared sufficient. Service is complete.

2. In this writ petition under Article 227, the petitioner who was the plaintiff in a suit for recovery of possession on the strength of title impugns the orders passed by the learned Munsiff dismissing the application for restoration and a separate application for condoning the delay caused in filing the restoration application. The petitioner filed a CMA and it was also dismissed. The case of the petitioner was that the suit was being jointly tried with another suit filed by the respondent for cancelling the document on the strength of which the petitioner sought recovery. At that time there was proposal for compromise and accordingly the case was posted for. The case was posted to 17.08.2000 for filing compromise. But since compromise was not filed on 17.08.2000 and since the petitioner was absent on that day the suit filed by the petitioner was dismissed. Explanation of the petitioner, offered by him through affidavit submitted to the Munsiff Court was that on 01.08.2000 while he was returning home, he suffered a paralytic

stroke, as a result of which one side of his body was completely paralysed. He had to undergo treatment of Dr.P.R.Jayathilakan. The learned Munsiff in the order dismissing the applications has found that the petitioner has not entered appearance for adducing oral evidence or for getting the medical certificate proved, though his case was that he was paralysed and was undergoing treatment of Dr.P.R.Jayathilakan had been stiffly refuted. In the appellate court a request was made for remand of the case for adducing evidence to substantiate the averments in the affidavit. The learned District Judge was not inclined to uphold that request since 2 or 3 chances were seen given by the learned Munsiff to adduce evidence and yet the plaintiff had not adduced evidence.

3. Heard both sides. It cannot be said that the orders impugned in this Writ Petition are vitiated to such an extent as to warrant correction under the visitorial jurisdiction of this Court under Article 227. Considering the policy of law that as far as possible, all causes must be adjudicated on their merits, I feel that the courts below should have allowed the applications by putting the petitioner on very stringent terms. In view of that policy, I set aside Exts.P1, P2 and P3 and allow the IAs filed by the petitioner for condonation of delay and also for restoration of suit. After all the suit is for recovery based on title and there was a

cross suit filed by the respondent for cancelling the title document relied on by the petitioner and it is common ground that there was a serious negotiation between the parties for compromise.

Accordingly, allowing the writ petition it is ordered that the IAs filed by the petitioner before the Munsiff will stand allowed on condition that the petitioner pays a sum of Rs.7,500/- to the respondents directly or through the counsel appearing for them in this court within one month of receiving copy of this judgment and pays a further amount of Rs.1,000/- as additional cost to the High Court Legal Services Committee within the same time limit. If payments are not made as above, the impugned orders will stand confirmed and the writ petition will stand dismissed. But if payments are made and the order setting aside the impugned orders become operative, the trial court will post OS No.2713 of 1998 again, try that suit and dispose of the same in accordance with law.

PIUS C. KURIAKOSE, JUDGE

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